THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 5040 of 2006

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Oral order:

The petitioner is working as Tyre Mechanic in the respondents-Corporation. While so, on 07.09.1998 he was issued charge sheet-cum-suspension order alleging that on 05.09.1998 he left his work place and was going out from the garage without the permission of his Shift Supervisor, and attempted to steal three flaps from the garage. The petitioner submitted his explanation denying the charges. Dissatisfied with the explanation, an enquiry was conducted. The Enquiry Officer, who conducted enquiry into the charges, held the charges proved. Based on the enquiry report, the 1st respondent issued notice to the petitioner to show cause as to why he should not be removed from service, and finally, vide proceedings dated 06.04.1999, the 1st respondent removed the petitioner from service. The appeal and review petition filed by the petitioner assailing the order of removal, were dismissed. In the meantime, since the criminal case in C.C. No. 145 of 1999 filed against the petitioner on the same charges was ended in acquittal he filed W.P. No. 14399 of 2001, and this Court, by order dated 22.04.2002, set aside the removal order and remitted the matter to the Regional Manager to reconsider the issue in the light of the judgment in C.C. No. 145 of 1999. The Regional Manager, without considering his case properly, once again rejected his case, by order dated 18.07.2002. Thereafter, the petitioner raised an industrial dispute in I.D. No. 332 of 2002, and the Labour Court, vide award dated 20.04.2005, set aside the removal order passed by the 1st respondent against the petitioner and directed the respondents

to reinstate the petitioner into service with continuity of service but without back wages and other monetary benefits. Assailing the award of the Labour Court, insofar as it denied backwages and other monetary benefits, the petitioner filed this writ petition.

The learned counsel for the petitioner submitted that the Labour Court having directed the respondents to reinstate the petitioner into service, committed error in not granting the backwages and other monetary benefits. He submitted that the punishment of denial of backwages is disproportionate to gravity of the charges leveled, and prayed that the award of the Labour Court to the extent of denying backwages, be set aside and the writ petition be allowed.

The learned Standing Counsel for the 1st respondent-APSRTC contended that the order passed by the disciplinary authority removing the petitioner from service, was confirmed in appeal and review petition, and even though the Labour Court upheld the guilty of the petitioner, yet directed the respondents to reinstate the petitioner into service, but denied backwages, and the said award, passed by the Labour Court, in no manner can be said to be illegal or arbitrary.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the 1st respondent-APSRTC.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

The Labour Court upon considering the evidence on record, found that the petitioner left his work place and was going out from the garage without the permission of his Shift Supervisor. However, considering the fact that the charge of theft was not proved against the petitioner, the Labour Court directed the respondents to reinstate the petitioner into service with continuity of service but without back wages and other monetary benefits. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[2]**)**.

In the instant case, though the Labour Court directed the respondents to reinstate the petitioner into service, the fact remains, denied him backwages and other monetary benefits. It is not as if the petitioner was directed to be reinstated upon the charges leveled against him were set aside. The Labour Court while upholding the charges leveled against the petitioner, directed his reinstatement into service. At any rate, the petitioner cannot claim entitlement of backwages, and more so when the charges leveled against him, were upheld by the Labour Court.

In **Karnataka Bank Ltd. v. A.L. Mohan Rao**[3], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as

the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

In the above view of the matter, I find no infirmity or perversity in the award passed by the Labour Court, warranting interference by this Court in exercise of its certiorari jurisdiction under Article 226 of the Constitution of India.

The writ petition is devoid of merit, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Dated: 14th November, 2006.
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[1] AIR 2003 SC 3044=2003AIR SCW3872

[2] (2006) 1 SCC 479

[3] (2006) 1 SCC 63